IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 231/2005
(Parsa Ram and Ors. Vs. State of Rajasthan & Ors.)

Date of Order : 20/07/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Ranjeet Joshi for the petitioners.
Mr. Ashok Upadhyay, public prosecutor for the State.
Mr. R.S.Choudhary for the non-petitioners.

BY THE COURT:-

By the instant criminal misc. petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code' hereinafter) the petitioners have challenged the order dated 03.11.2004 passed by Special Judge, SC/ST (Prevention of Atrocities) Cases, Merta (for short 'the revisional court' hereinafter) in Criminal Revision No. 40/2004 (30/03), whereby the revision petition filed by the petitioners against the order dated 11.7.2002 passed by Judicial Magistrate, Merta (for short 'the trial court' hereinafter) was allowed and while setting aside the order of the trial court, the matter was remanded to the trial court with a direction to keep in view the discussion made in the

order with regard to cognizance and rehear complainant Nathidevi and pass an appropriate order in accordance with law. Aggrieved by the order impugned to the extent directing the trial court to pass a fresh order keeping in view the legal position with regard to cognizance, the petitioners have filed the instant petition.

I have heard learned counsel for the parties. Carefully gone through the order passed by the revisional court as well as by the trial court.

Learned counsel for the petitioners submits that the order impugned is beyond the scope of Section 398 of the Code to the extent directing the trial court to keep in view the discussion made in the order regarding the appreciation of the law.

Learned counsel appearing for the non-petitioners submits that the petitioners have already availed one revision as envisaged under Section 397 and a second revision is barred by law under Sub-section (3) of Section 397 of the Code.

I have given my thoughtful consideration to the rival submissions made by the counsel for the parties.

So far as the contention regarding second revision being barred by Sub-section (3) of Section 397 of the Code is concerned, there is no dispute about the provision of law. However, this petition is not under Section 397 or 401 of the Code, but the petitioners have filed this petition invoking inherent jurisdiction under Section 482 of the Code. This controversy stands concluded by a catena of decisions and a reference may be made to a Three Judge Bench decision of Hon'ble Supreme Court in Krishnan & Anr. Vs. Krishnaveni & Anr., AIR 1997 SC 987, and therefore, the matter is no more res integra.

So far as the order impugned is concerned, the power of the revisional court under Section 397 of the Code, have been conferred under Section 398 Cr.P.C. which provides that on examining any record under Sec.397 or otherwise, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrates subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any Subordinate Magistrate to make, “further inquiry” into any complaint which has been dismissed under Section 203 or sub-section (4) of Sec.204 or into the case of any person accused of an offence who has been discharged. Thus, on examining any record or otherwise, the High Court or Sessions

Judge can make the order for further inquiry into any complaint. Further inquiry would mean re-consideration of the existing material only.

While explaining the scope of Section 398 of the Code, this Court, in Ramsingh & ors. Vs. State of Rajasthan 2003 WLC (Raj.) U.C. 563 observed that in revision, Court of Sessions cannot direct the trial court to take cognizance, but only a direction to hold further inquiry can be given.

In Lalita (Smt.) Vs. State of Rajasthan & Anr., 2004 (2) R.Cr.D. 545 (Raj.), while setting aside the revisional order, this court observed that in view of the provisions of Section 398 of the Code, the revisional court could have only directed for passing of fresh order after further inquiry. Explaining the meaning of "further inquiry", this court held that further inquiry only means reconsideration of the existing evidence.

In this view of the matter, the order impugned, to the extent directing the trial court to keep in view the discussion made in the order impugned is beyond the scope of Section 398 of the Code. However, the order impugned directing the trial court to rehear the parties including complainant Nathi Devi and pass an appropriate order according to law is perfectly in

accordance with law.

Consequently, the order impugned dated 3.11.2004, to the extent directing the trial court to keep in view the discussion made in the order impugned, is set aside. However, the trial court may make further inquiry. The expression "further inquiry" would mean re-consideration of the existing material only and pass an appropriate order in accordance with law.

With the above modification, the petition is disposed of. Stay petition also stands disposed of.

(H.R.PANWAR), J.

Rp